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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL *Arizona Corporation Commission*
Chairman

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JIM IRVIN
Commissioner

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MARC SPITZER
Commissioner

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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
PARTIAL VARIANCE OF CERTAIN
REQUIREMENTS OF A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

**ARIZONA PUBLIC SERVICE COMPANY'S
RESPONSE TO STAFF'S JANUARY 30, 2002 MOTION**

Arizona Public Service Company ("APS") hereby responds to the pleading submitted by Arizona Corporation Commission ("Commission") Staff on January 30, 2002. Although titled as a "Response to the January 22, 2002 Procedural Order" in Docket No. E-00000A-02-0051, it is really a motion seeking affirmative relief and will hereafter be referred to as the "Motion." APS urges the Chief Administrative Law Judge to deny the Motion in its entirety. As demonstrated below, to grant Staff's requests—which in effect ask for yet more delay and to add unnecessary complication to the resolution of a request that APS filed in October of last year—will place APS and its customers at significant and unnecessary risk, while making no meaningful progress on issues that need to be resolved now.

Arizona Corporation Commission

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1 **A. THE COMMISSION SHOULD CONDUCT A PROMPT**
2 **EVIDENTIARY HEARING, AND THE COMMISSIONERS**
3 **SHOULD BE ALLOWED TO HEAR RELEVANT EVIDENCE**
4 **AND DECIDE THE ISSUE**

5 In its October 18, 2001 filing for a partial variance to Rule R14-2-1606(B) and
6 for approval of a Purchase Power Agreement, APS stated that prompt resolution of this
7 matter was necessary. In its Reply to Staff's Response to the Request, APS again
8 discussed why prompt resolution of the matter was necessary and appropriate. At the
9 December 5, 2001 procedural conference, Staff supported the need to move forward on
10 APS' Request in a timely fashion. (Tr. at p. 61, lines 17-21.) APS promptly filed its
11 testimony in support of its Request on December 12, 2001.

12 To date, the only evidence in the record supports APS' Request and the need for
13 prompt resolution. APS has presented evidence showing how the literal application of
14 Rule 1606(B) will threaten reliability and price stability for its customers. APS has
15 shown that its proposed partial variance coupled with the Purchase Power Agreement is
16 a superior alternative that (1) protects its Standard Offer customers, (2) enhances the
17 reliability and security of power supplies for such customers, (3) does not adversely
18 affect the wholesale generation market, and (4) in no way restricts the continued
19 development of retail competition and its Direct Access customers.

20 APS asks the Commission to promptly consider its Request on the merits, so
21 that its customers at least have the opportunity to receive the advantages offered by
22 APS' Request. Also, APS and its affiliates should receive closure on the Request so
23 that they can appropriately prepare for their post-2002 relationship, as anticipated by
24 both the Electric Competition Rules and the 1999 APS Settlement.¹ The
25 Commissioners should be allowed to hear the evidence both for and against APS'

26 ¹ APS has already taken significant actions and incurred hundreds of millions of dollars
in increased costs and lost opportunities in good faith compliance with the terms of the 1999
APS Settlement and the Electric Competition Rules, and in order to be in the position of
offering the proposed Purchase Power Agreement for Commission consideration.

1 Request and make a timely decision that they believe is in the public interest. Any
2 opponents should likewise be required to present relevant and probative evidence of
3 their criticisms, rather than mere public comment. Regardless of its intent or any other
4 implications to be drawn from the Motion, the consolidation urged by Staff will prevent
5 this from occurring.

6 **B. THE AISA PROCEEDING, TEP'S MGC FILING, TEP'S**
7 **VARIANCE REQUEST, AND THE GENERIC INVESTIGATION**
8 **DO NOT WARRANT CONSOLIDATION**

9 To Staff, the various pending proceedings generally relating to retail electric
10 competition warrant consolidation and "concerted action." Staff, however, has not
11 shown that these various dockets are legally interdependent in any respect. Specifically,
12 the AISA proceeding merely involves transmission issues relating to a body that has
13 always been considered transitional and will be supplanted in the near future by a
14 Regional Transmission Organization. Likewise, the Tucson Electric Power Company
15 ("TEP") Market Generation Credit ("MGC") proceeding—which had been initiated
16 over a month before Chairman Mundell's letter and is nowhere mentioned in such
17 letter—is unique to TEP and the TEP Settlement. Neither APS nor any other Arizona
18 utility uses the MGC. TEP's Variance Request is not a request for a "variance" but
19 rather requests an indefinite stay of both Rule 1606(B) and Rule 1615(A).² Finally, the
20 Generic Investigation is just that—an investigation. It has identified no specific
21 objective, and has no definable end-point. The Commission's previous "investigation"
22 on retail electric competition began in 1994 and remains open to this day. *See* Docket
23 No. U-0000-94-165.

24 ² TEP's factual circumstances are in no way comparable to those of APS. For instance,
25 TEP and its affiliates are not in the process of constructing significant new generation to serve
26 Standard Offer customers, nor is it apparently desirous, in even a deliberate and considered
fashion, of moving forward towards a competitive market. Moreover, the TEP Settlement was
heard separately from the APS Settlement, and APS was not a party to such proceeding.

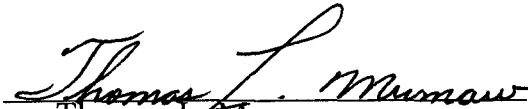
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C. CONCLUSION

The Chief Administrative Law Judge should not allow APS' Request to be further delayed, as requested by Staff. APS filed its Request over three months ago. It timely filed testimony as directed by the Chief Administrative Law Judge on an expedited schedule over seven weeks ago. APS has responded to literally hundreds of discovery requests of Staff and Intervenors under the accelerated schedule ordered by the Chief Administrative Law Judge. APS believes that the Commission can best address and resolve any questions concerning APS' Request for a Partial Variance and regarding the Purchase Power Agreement, as required by Rule R14-2-1614(C), by scheduling a formal evidentiary hearing at the earliest possible time.

RESPECTFULLY SUBMITTED this 3/5th day of January, 2002.

SNELL & WILMER L.L.P.


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1 Original and 10 copies of the foregoing
2 filed this 31st day of January, 2002,
3 with:

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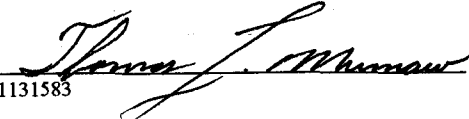
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